[ORIGINAL CIVIL JURISDICTION]

PEDLOW, J.

October 27, 1937.

N. P. L. S. T. MUTHIAH CHETTY....Plaintiff

against

1. AROKIAMARIAMMAL (f.)

2. GOH ENG THYE.....Defendants

[NEGRI SEMBILAN CIVIL SUIT No. 13 of 1937]

Purchase of chargee's right title and interest in a charge—Right to sue for damages —Section 283 (i) (e) of the Civil Procedure Code (Cap. 7).

The first defendant was the registered proprietor of an undivided half share in a piece of land.

In 1929 she executed a charge over her share in that land in favour of S.C.

In May 1929 the chargee transferred the charge to K.C.

In 1933 the charge was attached and sold in execution against K.C. and was bought by P'C. and the plaintiff.

In 1936 P'C. transferred his undivided half share in the charge to the second defendant.

By the terms of the charge the principal sum was made payable on the.....

The plaintiff sought to recover interest by way of damages for non-payment on the due date..

The second defendant who refused to join as plaintiff was added as a defendant, no relief being sought against him.

Held: The right to sue for interest by way of damages does not arise from the charge *qua* charge but arises from the personal covenant to repay of which the language of the charge is merely evidence. When the plaintiff purchased K.C's right title and interest in the charge he was buying the latter's right title and interest in and all moneys due to K.C. in respect of the charge but not any right to sue for damages.

E. Jeff and Ramani for the plaintiff.

F. A. Wright for the first defendant.

PEDLOW, J.—The 1st defendant borrowed $35,000 from one S. RM. RM. S. Supramaniam Chettiar and executed a charge on 28th March, 1929, over her undivided half interest in land held under Negri Sembilan Grant for Land No. 8828 for Lot No. 257, Tampin.

On 8th May, 1929, the chargee transferred the charge to S. R.M. S.L. Kasi Chettiar.

On 25th March, 1933, the charge was attached in execution proceedings, was sold by public auction and bought by one P. P'Chient and the plaintiff who became registered as the joint chargees.

In or about April, 1936, P. P'Chient transferred his undivided half share in the charge to the 2nd defendant.

On 26th November, 1936, in Seremban Originating Summons No. 142 of 1934 an order of Court for sale of the 1st defendant's share of the land was obtained to recover the amount due by her on the charge and the Registrar was directed to hold an enquiry to ascertain this amount. He found that the sum of $34,000 was due. To prevent the sale of the land this sum and an amount for costs was deposited with the Registrar on 1st April, 1937. It has not yet been drawn out of Court for reasons not connected with this suit.

But before the deposit this suit was launched on the 2nd January, 1937. The 2nd defendant refused to join as plaintiff and was added as a defendant. No relief is sought against him.

It is now sought to recover the principal sum due on the charge less any amount recovered under the order for sale referred to above and also to recover interest by way of damages for non-payment of the principal sums due on the charge on the due date.

The claim for the principal is not disputed. But the claim for interest by way of damages is disputed on two grounds:

(1) limitation.

(2) no cause of action.

I take limitation first. The last payment under this charge was made on 28th November, 1930. This suit was filed on 2nd January, 1937. *Prima facie* the claim is statute barred under article 95 of the Schedule to the Limitation Enactment. But on 14th May, 1936, and on 17th June, 1936, the 1st defendant by her attorney swore two affidavits each admitting borrowing the money on the charge. These affidavits I hold to be adequate acknowledgment of liability to bring section 18 of the Limitation Enactment into play and so start a new period of limitation running. The defence of limitation therefore fails.

I now turn to the other defence. What was seized in execution against Kasi Chettiar was his right, title and interest in, and all moneys due to him in respect of, the charge which he held over 1st defendant's land. The right to sue for interest by way of damages clearly does not arise from the charge *qua* charge but arises from the personal covenant to repay of which the language of the charge is merely evidence. When, therefore, the plaintiff bought a half share of Kasi Chettiar's "right title and interest" in the charge he clearly did not buy any right to sue for damages.

It was argued for the plaintiff that when he became the chargee by registration section 42 of the Land Code gave him all the rights of the original chargee. But this argument is based on the fallacious assumption that the right to sue for damages arises from the charge. It does not. It arises from a personal covenant unconnected with the charge as such. *Arumugam* v. *Leonard*, (1936) F.M.S. L.R. 1; 5 M.L.J. 252.

Further the plaintiff is once again prevented from suing for damages by the operation of section 283 (i) (e) of the Civil Procedure Code which says that mere rights to sue for damages cannot be seized in execution. The right to sue for interest by way of damages is a mere right to sue for damages.

It was argued for the plaintiff that section 283 Civil Procedure Code only applied to damages in tort. I cannot agree. I see nothing to limit it to tort as opposed to contract. And there is nothing in the decision of the Court of Appeal in *R. G. Sabapathy Pillay* v. *Tham Hing Kwai*, (1935) F.M.S.L.R. 1; 4 M.L.J. 206 which suggests such limitation. It follows then that what the plaintiff bought when Kasi Chettiar's interest was auctioned did not include Kasi Chettiar's right to sue for damages.

The claim for damages, therefore, fails.

I give judgment for the plaintiff for items (a) and (c) as in paragraph 14 of the plaint, i.e. one-half of $34,000 less the sum standing to his credit in Court under Originating Summons No. 142 of 1934 with costs against the 1st defendant to the date of that payment into Court, viz., 1st April, 1937.

I dismiss the claims under items (b), (d), (e) and (g) of paragraph 14 of the plaint and order that the entire costs of this suit, except the costs provided for above, be borne by the plaintiff.

No costs are awarded to the 2nd defendant.

Judgment and Order in favour of Plaintiff accordingly.

[APPELLATE CRIMINAL JURISDICTION]

THOMAS, C.J.

July 29, 1937.

PUBLIC PROSECUTOR.....Appellant

against

B. M. SUNDRAM.....Respondent.

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 28 of 1937]

Second-hand Dealers Enactment (Cap. 86)—Licence under section 6 in the form in Third Schedule—Scope of licence—Licence invalid out of State where obtained.

S. was granted at Ipoh a licence under section 6 of the Second-hand Dealers Enactment (Cap. 86) in the form in the Third Schedule. Cap. 86 is a Federal Enactment.

Purporting to act under that licence he purchased second-hand goods in Kuala Selangor.

Held, the licence is limited to each individual State.

M. C. Hay, Deputy Legal Adviser, for Public Prosecutor.

J. Dunford Wood for respondent.

Cur. Adv. vult.

THOMAS, C.J.—This is an appeal by the Public Prosecutor from a decision of the Magistrate of Kuala Selangor acquitting the respondent one Sundram in respect of a charge under section 6 of the Second-hand Dealers Enactment (Cap. 86) punishable under section 9 of that Enactment.

The respondent had obtained two licences under section 6; the first was under the first schedule, which allowed him to stock and deal in second-hand goods, and the second under the third schedule which was limited to dealing in certain class of goods.

Section 6 says:—

> "No person unless exempted from this Enactment shall deal in second-hand goods except in accordance with the conditions of a licence issued under this Enactment and in the Form of the First Schedule hereto and in the place specified in such licence:
>
> Provided that any person who deals exclusively in the goods specified in the Second Schedule or any of them may be granted a licence in the Form in the Third Schedule.
>
> Section 7, 12, 13, 14 and 15 of this Enactment shall not apply to such person, nor need such licence specify his place of business, but every such licensee shall carry his licence on his person and shall produce the same for inspection at any time on demand of any Police Officer."

There are certain advantages in a licence under the third schedule because the holder is then exempted from complying with conditions contained in sections 7, 12, 13, 14 and 15 of the Enactment.

The point at issue between the Public Prosecutor and the respondent is what is the scope of a licence under the third schedule. It has been referred to as a roving licence, but the question is whether it is a licence to rove over the whole of the Federated Malay States or is limited to the State where it has been obtained. Attention has been drawn to section 3 which says:—

> "In each State the Chief Police Officer shall be the licensing officer but he may depute his powers in respect of any district of such State to any police officer not below the rank of Inspector".

It has been argued that the Chief Police Officer of one State could not possibly issue a licence which was to have effect in other States of the Federation.